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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, D.C. 20536

File: WAC 01 218 56167

Office: CALIFORNIA SERVICE CENTER

Date: **MAY 14 2003**

IN RE: Petitioner:

Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Acting Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), in order to employ him as an outreach minister.

The acting director denied the petition finding that the beneficiary's volunteer work with the petitioner was insufficient to satisfy the requirement that he had been continuously and solely carrying on a religious occupation for at least the two years preceding the filing of the petition. The acting director further found that the petitioner provided insufficient evidence to establish that the beneficiary is qualified for the proffered position. The acting director also found that the petitioner failed to establish that it has the ability to remunerate the beneficiary.

On appeal, counsel for the petitioner submits a brief asserting that the beneficiary possesses the two years experience and that there is no requirement that the beneficiary be paid for such services.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work

for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The petitioner in this matter is an evangelical church. The beneficiary is a native and citizen of the Philippines. The petitioner states that it has 200 members in its congregation and failed to state the number of its employees. It submitted evidence that it has the appropriate tax exempt recognition. The beneficiary entered the United States as a nonimmigrant visitor for pleasure (B-2) on July 23, 1996.

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

The first issue to be addressed in this proceeding is whether the beneficiary had been continuously and solely carrying on the vocation of an outreach minister for the two years preceding the filing of the petition.

8 C.F.R. § 204.5(m)(1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on April 26, 2001. Therefore, the petitioner must establish that the beneficiary was

continuously and solely carrying on the vocation of an outreach minister since at least April 26, 1999.

The petitioner submitted a letter from its Senior Pastor, stating that the beneficiary is responsible for outreach and expansion of evangelism in Pasadena City. The Senior Pastor stated that the ministry in Pasadena is:

a non-profit, God Centered [sic] who doesn't receive an [sic] specific amount as a salary but instead do received [sic] a love Gift, Offering and Tithes. These sources are more than enough to cover the Pastor's needs and expenses.

The director concluded that a claim of voluntary service to one's church was insufficient to satisfy the requirement of having been solely and continuously engaged in a religious occupation. The AAO concurs.

The statute and its implementing regulations require that a beneficiary had been continuously carrying on the religious occupation specified in the petition for the two years preceding filing. The regulations are silent on the question of volunteer work satisfying the requirement. The regulations were drafted in recognition of the special circumstances of some religious workers, specifically those engaged in a religious vocation, in that they may not be salaried in the conventional sense and may not follow a conventional work schedule. The regulations distinguish religious vocations from lay religious occupations and ministers. 8 C.F.R. § 204.5(m)(2) defines a religious vocation, in part, as a calling to religious life evidenced by the taking of vows. While such persons are not employed *per se* in the conventional sense of salaried employment, they are fully financially supported and maintained by their religious institution and are answerable to that institution. The regulation defines a lay religious occupation, in contrast, in general terms as an activity related to a "traditional religious function." *Id.* Such laypersons are employed in the conventional sense of salaried employment. The regulations state "minister means an individual: duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. . . ." Similarly, ministers are also employed in the conventional sense of salaried employment. The regulations recognize this distinction by

requiring that in order to qualify for special immigrant classification as a minister, the job offer for a minister must state how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration) and the documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support. See 8 C.F.R. § 204.5(m)(4). Because the statute requires two years of continuous experience in the same position for which special immigrant classification is sought, the Bureau interprets its own regulations to require that, in cases of lay persons seeking to engage in a religious occupation and ministers, the prior experience must have been continuous salaried employment in order to qualify as well.

Furthermore, in evaluating a claim of prior work experience, the Bureau must distinguish between common participation in the religious life of a denomination and engaging continuously in a religious occupation. It is traditional in many religious organizations for members to volunteer a great deal of their time serving on committees, visiting the sick, serving in the choir, teaching children's religion classes, and assisting the ordained ministry without being considered to be carrying on a religious occupation. It is not reasonable to assume that the petitioning religious organization, or any employer, could place the same responsibilities, the same control of time, and the same delegation of duties on an unpaid volunteer as it could on a salaried employee. For all these reasons, the Bureau holds that ministers and lay persons who perform volunteer activities, are not engaged in a religious occupation or vocation of minister, and that the voluntary activities do not constitute qualifying work experience for the purpose of an employment-based special immigrant visa petition.

Here, the letter from the petitioner's Senior Pastor does not state the average amount of time the beneficiary devotes to the church and does not indicate that he engaged in this activity as his sole occupation. The petitioner's Senior Pastor wrote that the beneficiary spends six hours a month participating in regular worship services and Bible studies at the Pastor's home, and that he makes four weekly night visits and every other Sunday visits to two separate health care facilities. The petitioner failed to indicate the amount of time required for each visit. The petitioner

indicated that the beneficiary is required to attend worship services once a month to report on his outreach activities. It cannot be concluded that the petitioner has overcome the director's concerns.

Another issue raised by the director is whether the beneficiary is qualified for the proffered position of outreach minister. The petitioner provided the Bureau with a copy of a diploma the beneficiary earned at the CIRM New Life Theological Seminary and of his ordination certificate. The petitioner has not explained the standards required to be recognized as a minister in the denomination or shown that the beneficiary has satisfied such standards. Simply producing documents purported to be certificates of ordination, which are not based on theological training or education, is not proof that an alien is entitled to perform the duties of a minister. *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

The final issue raised by the director is whether the petitioner established that it has the ability to pay the proffered wage.

In pertinent part, 8 C.F.R. 204.5(g)(2) states:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

In the instant case, the petitioner indicated that it had sufficient means to cover the beneficiary's expenses. The petitioner failed to provide any financial reports or statements to the Bureau. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.